

STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM COURT OF APPEALS

IN RE PETITION BY TREASURER OF
WAYNE COUNTY FOR FORECLOSURE

WAYNE COUNTY TREASURER,

Petitioner,

and

MATTHEW TATARIAN and MICHAEL KELLY,

Intervening Parties-Appellants,

v

PERFECTING CHURCH,

Respondent-Appellee.

Supreme Court No. 129341

Court of Appeals No. 261074

Wayne County Circuit Court
No. 02-220192-PZ

AMICUS BRIEF OF MICHIGAN DEPARTMENT OF TREASURY

ORAL ARGUMENT NOT REQUESTED

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QUESTIONS PRESENTED FOR REVIEW

- I. MCL 211.78k(6) states that following expiration of the redemption period set forth in a tax foreclosure judgment the foreclosing governmental unit has absolute title to the property, which title "shall not be stayed or held invalid" except upon appeal. MCL 211.78l provides that an owner of property foreclosed without proper notice may not bring an action for possession of the property, but is limited to an action for money damages in the Court of Claims. MCR 2.116 authorizes a circuit court to amend a judgment on various grounds. Does a circuit court have jurisdiction to amend a judgment of foreclosure under MCR 2.116, in light of MCL 211.78k(6) and .78l, where a former owner of foreclosed property was not given proper notice of the foreclosure?**
- II. MCL 211.78l provides that an owner of property foreclosed without proper notice may not bring an action for possession of the property, but is limited to an action in the Court of Claims for money damages in the amount of the fair market value of the property. Does MCL 78l permit a person to be deprived of property without being afforded due process?**

INTEREST OF AMICUS

In 1999 PA 123 (Act 123) the Legislature adopted a new process for foreclosure of ad valorem real property taxes under the General Property Tax Act (GPTA).¹ Counties had until December 1, 1999, to elect whether to participate in the foreclosure and sale of tax-delinquent property within the county. If a county chose not to participate, the State became responsible for obtaining titlework, sending notices, and handling the foreclosure hearings after the forfeiture of tax-delinquent property to the county treasurer.² Thirty-two counties opted to foreclose on their own delinquent taxes and 51 opted to allow the State to foreclose. In December 2004 counties could revisit their initial decisions. Seventy counties opted to foreclose and 13 opted to allow the State to continue to foreclose. The GPTA uses the term “foreclosing governmental unit” (FGU) to mean (a) the county treasurer or (b) the State, if a county has opted out of the foreclosure process. Thus, the State is the FGU in 13 counties.

The foreclosure of tax-delinquent parcels and the sale of foreclosed parcels are handled by the Department of Treasury in the 13 counties where the State is the FGU. Thus, the Department of Treasury has a strong interest in the foreclosure process, itself, and as the seller of foreclosed properties the Department has a strong interest in assuring that it has good title to the properties it is selling.

Under the former foreclosure process title insurance companies generally declined to insure title to tax-foreclosed properties without a quiet title action, and then only reluctantly, if at all. This was primarily because persons purchasing tax-foreclosed property from the State could not be assured that former owners would not be able to reacquire the property if there had been an error in the foreclosure process. Lack of insurability of title made it difficult to redevelop

¹ 1893 PA 206, MCL 211.1 *et seq.*

² MCL 211.78(3).

blighted, tax-foreclosed property. To address this problem the Legislature adopted a new foreclosure process under which former owners whose property is foreclosed without due process cannot reacquire the property, but can bring an action against the FGU in the Court of Claims for the fair market value of the property interest they lost. If purchasers of property foreclosed under the new foreclosure process cannot be assured of receiving good title, one of the major components of the Legislature's drive to "strengthen and revitalize the economy of this State and its municipalities by encouraging the efficient and expeditious return to productive use of property returned for delinquent taxes"³ will be thwarted.

For these reasons the Department of Treasury asks that the decision of the Wayne County Circuit Court setting aside the foreclosure and sale be reversed; that the Court hold that circuit courts do not have jurisdiction to amend their foreclosure judgments due to lack of notice after expiration of the redemption period set forth in the judgment in light of MCL 211.78k(6) and .78l and; that the Court hold that MCL 211.78l is constitutional.

³ MCL 211.78(1).

MICHIGAN'S NEW TAX FORECLOSURE PROCESS

In 1999 PA 123 (Act 123) the Legislature almost entirely rewrote the real property tax foreclosure process under the General Property Tax Act (GPTA).⁴

Under the former process tax liens were offered at tax lien sales in May of the third year of delinquency, followed by a one-year redemption period.⁵ If not redeemed within the one-year period, the property was deeded to the private lien purchaser for final foreclosure under MCL 211.140-142, a process that could extend up to five years after the property was eligible for deeding (up to nine years after the initial delinquency) or, if no private purchaser, was deeded to the State for foreclosure under MCL 211.131c and .131e, a process that normally extended up to three years after the sale (seven years after the initial delinquency).

Act 123 prescribed a new, streamlined process in which there is no sale of tax liens. Instead, delinquent tax liens are forfeited to the county treasurer in March of the second year of delinquency and the tax lien is foreclosed at a circuit court hearing the following February. Foreclosed properties may be redeemed until the March 31 following the foreclosure.⁶ Act 123 provides for a new and detailed series of notices to be given to owners of interests in delinquent properties.

On March 1 of each year, taxes levied in the immediately preceding year that remain unpaid are returned to the county treasurer as delinquent.⁷ County treasurers send notices by first-class mail not later than June 1 and September 1 following the return of taxes as delinquent to the taxpayer of record or the owner.⁸ Before February 1 of the year following the return of

⁴ 1893 PA 206, MCL 211.1 *et seq.*

⁵ MCL 211.74.

⁶ As originally enacted, the final redemption period expired 21 days after entry of Judgment. The process was amended by 2003 PA 263 to make uniform the expiration date on March 31.

⁷ MCL 211.78a(2).

⁸ MCL 211.78b, .78c.

delinquent taxes county treasurers must send a third notice (February 1 notice) by certified mail to the taxpayer of record and, if different, to the owner as shown on the current records of the county treasurer and to interestholders of record identified as shown on the records contained in the office of the local assessor, local treasurer, and county treasurer.⁹ The February 1 notice must also be sent to the occupant of the property, by first class mail, if notice is not otherwise sent to the address of the property.¹⁰

On March 1 of the year following delinquency, if the delinquent taxes remain unpaid, the property forfeits to the county treasurer.¹¹ Forfeiture allows the FGU to seek a judgment of foreclosure if property is not redeemed as provided under the Act.¹² Forfeiture does not give the county treasurer, or the State if the State is the FGU, any right, title or interest in the property.¹³

FGUs must file a circuit court petition listing all property forfeited and not redeemed, not later than June 15 following the forfeiture. The petition must seek a judgment in favor of the FGU vesting absolute title in the FGU without further rights of redemption.¹⁴ Prior to the circuit court foreclosure hearing the FGU must hold a show cause hearing to allow interestholders in forfeited property to show cause why absolute title to the forfeited property should not vest in the FGU.¹⁵

FGUs must obtain a title search to identify "the owners of a property interest in the property" entitled to notice of the administrative show cause hearing and of the judicial foreclosure hearing.¹⁶ "The owner of a property interest is entitled to notice" under Act 123 if

⁹ MCL 211.78f(1).

¹⁰ MCL 211.78f(2).

¹¹ MCL 211.78g(1).

¹² MCL 211.78(6)(b).

¹³ MCL 211.78(6)(b).

¹⁴ MCL 211.78h(1).

¹⁵ MCL 211.78j(1).

¹⁶ MCL 211.78i(1).

the owner's interest is of record in the records in the offices of the county register of deeds, the county treasurer, the local assessor, or the local treasurer.¹⁷

FGUs must send notice of the administrative show cause hearing and of the judicial foreclosure hearing by certified mail, return receipt requested, to "the owners of a property interest in the property" at "the address reasonably calculated to apprise those owners of a property interest" in tax-delinquent property, concerning the pendency of the administrative show cause hearing and the judicial foreclosure hearing.¹⁸

A circuit court hearing is held within 30 days prior to March 1 of the year following the forfeiture.¹⁹ A person claiming an interest in forfeited property may appear at the judicial foreclosure hearing to contest the validity or correctness of the taxes, interest, penalties, and fees.²⁰ A Judgment of Foreclosure is entered following the hearing.²¹ Title to parcels not redeemed by March 31 vests in the FGU.²² The FGU's title cannot be stayed or held invalid after expiration of the redemption date set forth in the judgment, except by appeal.²³

Appeal is by right, to the Court of Appeals.²⁴

¹⁷ MCL 211.78i(6).

¹⁸ MCL 211.78i(2).

¹⁹ MCL 211.78h(5).

²⁰ MCL 211.78k(2).

²¹ MCL 211.78k(5).

²² MCL 211.78k(5).

²³ MCL 211.78k(6).

²⁴ MCL 211.78k(7).

ARGUMENT

- I. **In light of the language of MCL 211.78k(6) and the exclusive remedy provided in MCL 211.78l, a circuit court does not have jurisdiction under MCR 2.116 to amend its judgment after expiration of the redemption date set forth in the judgment where property is foreclosed without due process.**

A. **Standard of Review**

Whether a circuit court has jurisdiction is a question of law that is reviewed de novo.²⁵

B. **Owners of property subject to foreclosure are not defendants in the *in rem* foreclosure action.**

Actions to foreclose tax liens are actions *in rem*, against the property, and not against the owners of interests in the property. Owners are not defendants and personal jurisdiction need not be acquired over them for the foreclosure to proceed. The *in rem* nature of tax foreclosures was described by this Court in *Ball v Ridge Copper Co*²⁶:

Judge Cooley, in the second edition of his work on Taxation (page 527), speaking of the proceeding to enforce the payment of the tax upon land, and of its nature, says:

"Proceedings of this nature are not usually proceedings against parties; nor, in the case of lands or interests in lands belonging to persons unknown, can they be. They are proceedings which have regard to the land itself, rather than to the owners of the land; and if the owners are named in the proceedings, and personal notice is provided for, it is rather from tenderness to their interests, and in order to make sure that the opportunity for a hearing shall not be lost to them, than from any necessity that the case shall assume that form. As in all other cases of proceedings in rem, if the law makes provision for publication of notice in a form and manner reasonably calculated to bring the proceedings to the knowledge of the parties who exercise ordinary diligence in looking after their interests in the lands, it is all that can be required."

In 1933 this Court, in *Thompson v Auditor General*, again discussed the *in rem* nature of a tax foreclosure²⁷:

²⁵ *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995).

²⁶ *Ball v Ridge Copper Co*, 118 Mich 7, 11; 76 NW 130 (1898).

²⁷ *Thompson v Auditor General*, 261 Mich 624, 652-653; 247 NW 360 (1933), quoting *Leigh v Green*, 193 US 79; 24 S Ct 390; 48 L Ed 623 (1904).

Under the tax law the State acquires a lien against the real estate assessed and before such land may be sold, such lien must be foreclosed and sale ordered by the court. Such foreclosure is a proceeding in rem, against the land itself

* * *

A proceeding in rem is a proceeding against the thing. Tax laws seek to make the land answer for public dues.

"When the proceedings are in personam the object is to bind the rights of persons, and in such cases, the person must be served with process; in proceedings to reach the thing service upon it and such proclamation by publication as gives opportunity to those interested to be heard upon application is sufficient to enable the court to render judgment."

This clearly remains the law in Michigan. In *Dow v Michigan*²⁸ and *Smith v Cliffs on the Bay Condominium Ass'n*²⁹ this Court addressed at length the due process requirements of notice to owners of land subject to foreclosure. Both recognized that the formal service requirements applicable to defendants are not applicable to owners of lands subject to foreclosure. Each preserved the notion of substituted service, holding that notice by certified mail directed at an address reasonably calculated to reach the person entitled to notice was sufficient for due process, even if the certified mail could not be delivered. Neither suggested property owners are or should be defendants in the foreclosure action or that personal jurisdiction over them was necessary.

Because tax foreclosure actions are actions *in rem*, owners are not defendants and personal jurisdiction over them is unnecessary to the foreclosure proceeding. Thus, failure to properly notice owners does not divest the circuit court of jurisdiction to foreclose tax-delinquent properties.

²⁸ *Dow v Michigan*, 396 Mich 192; 240 NW2d 450 (1976).

²⁹ *Smith v Cliffs on the Bay Condominium Ass'n*, 463 Mich 420; 617 NW2d 536 (2000), cert den 532 US 1020 (2001).

However, owners of property interests are entitled to due process protection in the tax foreclosure process as outlined in *Dow, Cliffs on the Bay Condominium Ass'n*, and *Republic Bank v Genesee County Treasurer*.³⁰ *Dow* defined the necessary due process protection, stating³¹:

[I]t would satisfy constitutional requirements if the state were to adopt a procedure providing for (i) ordinary mail notice before sale to the person to whom tax bills have been sent and to "occupant," and (ii) after sale to the state, formal notice to all owners of significant property interests of the constitutionally required opportunity for hearing and redemption. The burden required by the Constitution is manageable.

This Court held that "an elementary and fundamental requirement of due process in the proceeding which is to be accorded finality is notice reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."³² The Court determined that notice by mail is adequate if "directed at an address reasonably calculated to reach the person entitled to notice."³³ The Court noted "such would be the efforts one desirous of actually informing another might reasonably employ."³⁴

The Legislature adopted various amendments to the GPTA to comply with *Dow*, including the addition of § 131e of the GPTA.³⁵ In *Cliffs on the Bay Condominium Ass'n* this Court upheld the constitutionality of the legislative amendments adopted in response to *Dow*. The Court also made clear that the courts cannot impose notice requirements in excess of those set forth by the Legislature³⁶:

³⁰ *Republic Bank v Genesee County Treasurer*, 471 Mich 732; 690 NW2d 917 (2005).

³¹ *Dow*, 396 Mich at 212 (footnote omitted).

³² *Dow*, 396 Mich at 205-206.

³³ *Dow*, 396 Mich at 211.

³⁴ *Dow*, 396 Mich at 211 (footnote omitted).

³⁵ MCL 211.131e.

³⁶ *Cliffs on the Bay Condominium Ass'n*, 463 Mich at 430 (citations omitted, emphasis added).

The Legislature has provided a notice procedure that meets constitutional standards. *The Court of Appeals decision in this case constitutes an improper intrusion into the Legislature's authority to regulate tax sale proceedings. The courts lack the authority to create new notice requirements.* The fact that another statutory scheme might appear to have been wiser or would produce fairer results is irrelevant. Arguments based on such policy considerations must be addressed to the Legislature. Similarly, the fact that the township might have sought out defendant's legal residence in a more thorough or conscientious manner is not relevant to our analysis, in light of the language of the statute.

In *Republic Bank* the Court held the new foreclosure process set forth in Act 123 provided adequate due process protections.³⁷

The issue then becomes what is the impact of a failure to provide notice as required by Act 123?

- C. **The Legislature has established a Court of Claims action for damages in the amount of the fair market value of foreclosed property as the sole remedy for foreclosure of delinquent taxes without due process.**

The courts strictly construed the former process against a tax lien purchaser, or the State, or anyone claiming under either, to allow delinquent taxpayers or interestholders to redeem property after foreclosure and sale where the foreclosure process had not been strictly complied with.³⁸ As a result, title insurance companies generally declined to insure title to tax-reverted properties without a quiet title action, and then only reluctantly, if at all. Lack of insurability of title made it difficult to redevelop blighted property, which constitutes the majority of property abandoned to tax foreclosure by former owners.

The Legislature recognized and addressed this problem in Act 123. The first sentence added to the GPTA by Act 123 sets forth this legislative recognition:³⁹

³⁷ *Republic Bank*, 471 Mich at 742.

³⁸ *Stein v Hemminger*, 165 Mich App 678; 419 NW2d 50, lv den 430 Mich 896 (1988) (a tax lien buyer); *Brandon Twp v Tomkow*, 211 Mich App 275; 535 NW2d 268 (1995), lv den 452 Mich 857; 550 NW2d 539 (1996) (State).

³⁹ MCL 211.78(1).

The legislature finds that there exists in this state a continuing need to strengthen and revitalize the economy of this state and its municipalities by encouraging the efficient and expeditious return to productive use of property returned for delinquent taxes.

The Legislature made clear, as well, that the rights of former owners were subject to full due process protections, but not more⁴⁰:

It is the intent of the legislature that the provisions of this act relating to the return, forfeiture, and foreclosure of property for delinquent taxes satisfy the minimum requirements of due process required under the constitution of this state and the constitution of the United States but that those provisions do not create new rights beyond those required under the state constitution of 1963 or the constitution of the United States.

To address the lack of insurability, the Legislature provided in § 78k(6) that upon expiration of the redemption period set forth in the judgment, the FGU's title cannot be stayed or held invalid except upon appeal:⁴¹

Fee simple title to property set forth in a petition for foreclosure filed under section 78h on which forfeited delinquent taxes, interest, penalties, and fees are not paid within 21 days after the entry of judgment shall vest absolutely in the foreclosing governmental unit, and the foreclosing governmental unit shall have absolute title to the property. *The foreclosing governmental unit's title is not subject to any recorded or unrecorded lien and shall not be stayed or held invalid except as provided in subsection (7).*

The Legislature provided a specific remedy to owners of foreclosed property who do not receive adequate notice of the foreclosure hearings and that remedy does not allow the former owners to upset the foreclosure and sale of the property by the FGU. The remedy is an action for money damages in the amount of the fair market value of the property in the Court of Claims under § 78l⁴²:

⁴⁰ MCL 211.78(2).

⁴¹ MCL 211.78k(6) (emphasis added). This section was amended by 2003 PA 263 to make the final redemption date March 31 and to include a reference to MCL 211.78k(9), authorizing the FGU to set aside a foreclosure prior to the property being transferred by the FGU.

⁴² MCL 211.78l (emphasis added).

(1) If a judgment for foreclosure is entered under section 78k and all existing recorded and unrecorded interests in a parcel of property are extinguished as provided in section 78k, *the owner of any extinguished recorded or unrecorded interest in that property who claims that he or she did not receive any notice required under this act shall not bring an action for possession of the property against any subsequent owner*, but may only bring an action to recover monetary damages as provided in this section.

(2) The court of claims has original and exclusive jurisdiction in any action to recover monetary damages under this section.

The limitation in § 78k(6), coupled with the remedy of money damages within the exclusive jurisdiction of the Court of Claims, divests the circuit court of jurisdiction to amend its judgment once the redemption period has expired where an owner did not receive notice.

Section 78l is narrowly crafted to address only situations involving foreclosure without due process. It does not address other situations that may deprive a circuit court of jurisdiction to foreclose forfeited taxes. Thus, for example, § 78l does not divest the circuit court of jurisdiction to grant post-judgment relief if property that could not lawfully be taxed or could not lawfully be foreclosed is inadvertently foreclosed by the court's foreclosure judgment.

Limiting the remedy for a foreclosure without adequate notice is central to the Legislature's goal of insuring that FGUs acquire "good and marketable fee simple title"⁴³ to foreclosed property. If, as under the former foreclosure process, an FGU or someone acquiring from an FGU cannot be assured that a former owner who did not receive notice will not be able to reacquire the property, the title acquired may not be good and will not be marketable. It matters not to someone who purchases foreclosed property from an FGU, such as appellants Tartarian and Kelly, whether the foreclosure and sale is set aside in an independent action or under MCR 2.612. Any action by the courts that allows a former owner who did not receive notice to redeem foreclosed property after it has been sold is inconsistent with the language of §

⁴³ MCL 211.78k(5)(d).

78k(6) and the Legislature's limitation of remedies to an action for money damages in the Court of Claims. Thus, §§ 78k(6) and 78l prohibit a circuit court from granting relief under MCR 2.116 on the basis that a former owner did not receive notice of the foreclosure.

In 2002 and 2003, the first two years of foreclosures following adoption of Act 123, various courts, including the Wayne County Circuit Court in this matter, granted post-judgment relief under MCR 2.612, allowing former owners to redeem property even after it had been sold by the FGU.

In response, the Legislature, in 2003 PA 263, added § 78k(5)(g) to the GPTA⁴⁴ requiring that language be included in the foreclosure judgment indicating it cannot be amended after the expiration of the redemption period set forth in the judgment:

A judgment entered under this section is a final order with respect to the property affected by the judgment and except as provided in subsection (7) shall not be modified, stayed, or held invalid after the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or for contested cases 21 days after the entry of a judgment foreclosing the property under this section. [emphasis added]

Thus, in 2003 PA 263 the Legislature further clarified that the circuit court lacks jurisdiction to amend its judgment under MCR 2.612 where an owner did not receive notice of the foreclosure.⁴⁵

D. MCL 211.78l does not violate the constitutional separation of powers.

Although it could be argued that under Const 1963, art 6, § 5 and *McDougall v Schanz*,⁴⁶ that the Legislature may not constitutionally limit the courts' authority under MCR 2.612, such is not the case. *McDougall* and similar cases hold that matters of practice and procedure are vested

⁴⁴ MCL 211.78k(5)(g).

⁴⁵ At the same time the Legislature also added § 78k(9) to the GPTA, MCL 211.78k(9), authorizing foreclosing governmental units to cancel judgments of foreclosure as to individual parcels for specified reasons (primarily errors in the foreclosure process), at any time prior to the transfer of the property, by the recording of a certificate of error.

⁴⁶ *McDougall v Schanz*, 461 Mich 15; 597 NW2d 148 (1999).

in this Court while matters of substantive law are vested in the Legislature. As the Court of Appeals stated in *People v Conat*, “if the statute does not address purely procedural matters, but substantive law, the statute prevails.”⁴⁷

In *McDougall*, this Court held that a statutory evidentiary rule restricting the admissibility of expert opinions in certain medical malpractice cases did not impermissibly infringe on the Court's constitutional rulemaking authority over practice and procedure, even though the statute directly conflicted with a court rule of evidence. The Court concluded that the statute was an enactment of substantive law, reflecting “wide-ranging and substantial policy considerations relating to medical malpractice actions against specialists.”⁴⁸ Therefore, the statute, not the court rule, governed. In *Conat*, the Court of Appeals upheld the legislative adoption of the automatic juvenile waiver system and automatic sentencing as adults of juveniles convicted of certain crimes. Although clearly contrary to a court rule, the Court upheld the statute on the basis that it involved “substantive policy considerations regarding juvenile crime and how to punish juveniles who commit serious crimes.”⁴⁹

The same is true in the instant situation. Assuring the purchasers of foreclosed properties receive clear title and do not face the possibility of a subsequent decision canceling the foreclosure and sale is critical to the Legislature's goal of promoting redevelopment of tax-foreclosed properties. Thus, prohibiting a court from amending its Judgment under MCR 2.612 reflects “substantive policy considerations” not merely procedural matters.

⁴⁷ *People v Conat*, 238 Mich App 134, 163; 605 NW2d 49 (1999), lv den 461 Mich 1013; 622 NW2d 521 (2000), citing *McDougall*.

⁴⁸ *McDougall*, 461 Mich at 35.

⁴⁹ *Conat*, 238 Mich App at 163.

II. MCL 211.78I does not permit a person to be deprived of property without being afforded due process.

A. Standard of Review

Constitutional issues are questions of law reviewed de novo.⁵⁰ The State and Federal Due Process Clauses are coextensive. Absent definitive differences in the text of the State and federal provision, common-law history that dictates different treatment, or other matters of particular State or local interest, courts should reject the "unprincipled creation of state constitutional rights that exceed their federal counterparts."⁵¹ In *Dow v Michigan, supra*, this Court analyzed the constitutionality of Michigan's tax foreclosure process under the Federal Due Process Clause.

B. Analysis

The United States Supreme Court has held that a state action that causes a deprivation of protected rights to life, liberty, and property is not unconstitutional. What constitutes a constitutional violation is deprivation of a person's right without due process of law.⁵² Mere negligence on the part of a governmental official is not a due process violation.⁵³ In *Parratt v Taylor*⁵⁴ the Court held there was no procedural due process violation for a deprivation of property without a pre-deprivation hearing where the state provided an adequate post-deprivation remedy in tort law. The Court further held that since the remedy was able to provide full

⁵⁰ *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998); *Carmacks Collision, Inc v Detroit*, 262 Mich App 207, 209; 684 NW2d 910 (2004).

⁵¹ *People v Sierb*, 456 Mich at 523, quoting *Sitz v State Police*, 443 Mich 744, 763; 506 NW2d 209 (1993).

⁵² *Carey v Phipus*, 435 US 247, 259; 98 S Ct 1042; 55 L Ed 2d 252 (1978); *Parratt v Taylor*, 451 US 527, 537; 101 S Ct 1908; 68 L Ed 2d 420 (1981), overruled in part on other grds, *Daniels v Williams*, 474 US 327; 106 S Ct 662; 88 L Ed 2d 662 (1986).

⁵³ *Daniels v Williams*, 474 US 327; 106 S Ct 662; 88 L Ed 2d 662 (1986).

⁵⁴ *Parratt v Taylor*, 451 US 527, 537; 101 S Ct 1908; 68 L Ed 2d 420 (1981), overruled in part on other grds, *Daniels v Williams*, 474 US 327; 106 S Ct 662; 88 L Ed 2d 662 (1986).

compensation for the property loss, the state had adequate remedies in place to satisfy the requirements of due process.

The tax foreclosure process set forth in Act 123 provides adequate due process protection.⁵⁵ The question is whether GPTA § 78I provides an adequate remedy for the random error in the foreclosure process that fails to provide notice before the foreclosure. The action giving rise to this issue does not involve fraud or bad faith, but merely an error that forecloses property without adequate notice. Section 78I establishes a remedy that allows a person who loses property without notice to recover the full fair market value of the property. Thus, the remedy provides full compensation for the property loss.

That money damages are an adequate remedy for the loss of real property is implicit in the eminent domain provisions found in Const 1963, Art 10, § 2, requiring the payment of just compensation for the taking of property by the State. Just compensation is the market value of the property, taking into account all factors relevant thereto.⁵⁶

⁵⁵ *Smith v Cliffs on the Bay Condominium Ass'n*, *supra*, n 35.

⁵⁶ *Silver Creek Drain Dist v Extrusions Div, Inc*, 468 Mich 367, 378-379; 663 NW2d 436 (2003).

CONCLUSION

Under the former foreclosure process title insurance companies generally declined to insure title to tax-foreclosed properties. This was primarily because persons purchasing tax-foreclosed property from the State could not be assured that the courts would not allow former owners to reacquire the property if there had been an error in the foreclosure process. Lack of insurability of title made it difficult to redevelop blighted, tax-foreclosed property.

To address this problem the Legislature adopted a new foreclosure process under which former owners whose property is foreclosed without due process cannot reacquire the property, but can bring an action against the FGU in the Court of Claims for the fair market value of the property interest they lost. Under GPTA § 78k(6) the FGU's title cannot be invalidated except on appeal and under § 78l the former owner's remedy for the error in the foreclosure process is an action in the Court of Claims for the fair market value of the foreclosed property. Section 78k(6) and 78l divest the circuit court of jurisdiction to invalidate a foreclosure once the redemption period has expired and § 78l provides a adequate remedy to correct the error in the foreclosure process.

Purchasers of foreclosed property must be assured of receiving good title in order to "strengthen and revitalize the economy of this state and its municipalities by encouraging the efficient and expeditious return to productive use of property returned for delinquent taxes" as intended by Act 123.⁵⁷

⁵⁷ MCL 211.78(1).

RELIEF SOUGHT

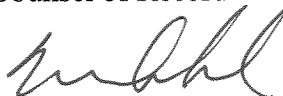
The Department of Treasury asks that:

- (1) The decision of the Wayne County Circuit Court setting aside the foreclosure and sale be reversed,
- (2) The Court hold that circuit courts do not have jurisdiction to set aside a foreclosure judgment due to lack of notice after expiration of the redemption period set forth in the judgment in light of §§ 78k(6) and 78l, and
- (3) The Court hold that § 78l does not permit a person to be deprived of property without due process.

Respectfully submitted,

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